CONSTITUTIONAL LAW
POLITICAL SCIENCE 426/526
FALL 2010

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COURSE DESCRIPTION

This is a survey course for undergraduates and graduate students who are interested in understanding more about how the Constitution works as a structure for government. It is offered for writing credit as well. We will focus on how the federal courts, and in particular the Supreme Court, interact within our system of government. We will not be addressing questions of civil liberties directly, although some of the materials we will consider touch on these areas.

The course is organized historically. We will discuss constitutional structure and constitutional interpretation, and then move through an analysis of the major periods in American constitutional development from the founding through the present. The course has a slight emphasis on executive authority, but covers constitutional development comprehensively.

REQUIREMENTS

Is this class right for me? This course will involve significant reading and writing requirements, probably among the highest you will encounter in the POS department. You will be expected to complete all of the reading and to attend all of the lectures. Students who have tried in the past to get by through either doing the reading or coming to lectures have traditionally been unhappy with their final grades. The course demands a lot, but delivers a lot in return, in proportion to the effort you put into it. That being said, effort alone will not get you an A. Only outstanding performances on the various assignments will get you into the A range for this course. Of course, effort is not irrelevant in establishing outstanding performance!

Students will be expected to attend class and participate in class discussions. Constructive, informed, respectful participation that contributes directly to conversations about the course material will raise borderline grades; lack of participation or consistently disruptive participation may result in lower grades. Class participation and attendance will constitute 10% of your grade. The baseline grade for class participation is a B, so a student who does not miss class but never participates in discussions can expect to get a B for this component of the course. You will be expected to keep up with the reading throughout the term. You will not be able to do well on the assignments or examinations without both attending lectures and doing the reading.

Students will also be expected to complete a major writing assignment. The assignment is to write an argumentative essay, guidelines for which will be distributed early in the term. You will
write the essay in two drafts, both of which will be graded. The final draft will be due at the end of
the term. The essay will be in the form of a judicial opinion in a hypothetical case about a conflict
over the scope of executive authority during emergencies. There will be no “right” ruling in the
case; you will be graded on your ability to argue effectively using the precedents and techniques we
learn in the class.

The class will also have four examinations, three quizzes and a final. You will be expected
to keep up with the reading throughout the term. If it becomes clear that the members of the class
are not preparing adequately, the professor reserves the right to administer additional unannounced
quizzes. The regular quizzes are intended primarily to assist you in preparing for the types of
questions that will appear on the final examination.

The allocation of weight for your various obligations is as follows:

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Weight</th>
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<tbody>
<tr>
<td>Rough Draft of Paper</td>
<td>5%</td>
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<tr>
<td>Final Draft of Paper</td>
<td>35%</td>
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<tr>
<td>Quiz One</td>
<td>5%</td>
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<tr>
<td>Quiz Two</td>
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<td>Quiz Three</td>
<td>5%</td>
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<tr>
<td>Class Participation</td>
<td>10%</td>
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<tr>
<td>Final examination</td>
<td>35%</td>
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</tbody>
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**POLICIES**

*Students with disabilities.* If you have a documented disability and anticipate needing
accommodations in this course, please make arrangements to meet with the professor soon. Please
request that Disabilities Resource Center send a letter verifying your disability.

*Extensions for papers.* Extensions for papers will only be permitted under
compelling circumstances and if the extension is requested in advance. Any student who does not
turn in her or his paper on time and has not contacted the professor in advance will lose a half grade
per day for every day the paper is late unless the student can provide a University-approved excuse.

*Class attendance.* You will be expected to attend class. Each student is
permitted to miss two days of class per term with no questions asked and no penalties or
reductions in his or her class participation grade. Any classes missed beyond those two will be
taken into account in determining your class participation grade, regardless of the reason.

*Regrading of materials.* You may request regrading of materials. If you wish to make
such a request, contact the professor for a copy of the regrading policy. You will be asked to
provide a written explanation of why you wish to have the assignment regraded.

*Plagiarism or cheating.* This one’s simple: don’t do it. Don’t even think about doing
it. Plagiarism is the use of someone else’s words or ideas without giving the original author credit
by citing him or her. If you use someone else’s language directly, you must use quotation marks. If
you rely on another person’s ideas in creating your argument, you must provide a citation. If you
have any questions about plagiarism, please contact me before you submit the assignment for
grading. If you plagiarize or cheat in this class, the **BEST** outcome you can hope to achieve is a
failing grade from me, in addition to any mandatory university sanctions. Plagiarism or cheating,
even if unintentional, will result in a failing grade for the assignment at the **very minimum.**
MATERIALS

The text for the course is *American Constitutionalism Volume I: Structures of Government*, by Howard Gillman, Mark Graber, and Keith Whittington. This is a very new textbook for constitutional law classes – so new, in fact, that it is not yet available for purchase as a bound volume. You have two options for getting access to the materials we will read. One is to pick up the book as a course packet. It is available for purchase at Mary Jane’s. The other is to get access to the entire book and a few supplemental cases on the course’s Blackboard site. To log on to Blackboard, go to [http://bls.its.albany.edu/webct/entryPageIns.dowebct](http://bls.its.albany.edu/webct/entryPageIns.dowebct) and follow the login instructions. A few additional materials will be available on the Blackboard site. **IMPORTANT NOTE: You will need to use Blackboard to research your papers and get copies of course materials.**

SYLLABUS

(NOTE: This syllabus is a guideline. If we get substantially behind, a few topics may be omitted. The course packet has only the pages we are reading in each chapter, but the full chapters are all available on Blackboard.)

The Roots of the Constitution and Constitutional Interpretation

August 31: Introduction and group activity
*Introduction*
- American Constitutionalism, Introduction (hereinafter AC), 36-60

September 2: No class due to APSA meeting
- Continue reading AC Chapter One
- AC Appendix 1 (US Constitution), 1503-1518
- AC Appendix 2 (Doing Legal Research and Reading Supreme Court Cases), 1519-1529
- How to Read a Case (on Blackboard)*

Foundational History

September 7: Constitutional Interpretation, Authority, and Change
*Introduction: The Colonial Era*
- Separation of Powers
- Judicial Power
- AC Chapter 2, 61-64; 74-84

September 9: No class due to Rosh Hashanah

September 14: Colonial Era-Founding
*Founding Era: Introduction*
- Iredell, To the Public
- Brutus 11
- Brutus 12
- Federalist 78
Other Issues

- Resolves of the Concord Town Meeting
- Jefferson, Notes on the State of Virginia
- Wilson, Pennsylvania Ratification Speech
- Federalist 84
- AC Chapter 3, 90-96; 144-162

September 16: The Early National Period and the Rise of National Power

Introduction: The Federalist/Jeffersonian Era
- The Necessary and Proper Clause
- Debate on the Bank of the United States
- Jefferson’s Opinion
- Hamilton’s Opinion
- McCulloch v. Maryland
- Roane and Marshall on McCulloch v. Maryland

Quaker Petition on Slavery
- AC Chapter 4, 1-38

September 21: Delineating the Scope and Limits of National Power

- Gibbons v. Ogden
- Sovereign Immunity
  - Chisholm v. Georgia
  - The Eleventh Amendment

State Authority to Interpret the Constitution
- Virginia and Kentucky Resolutions
- Massachusetts Resolution
- Virginia Report
- AC Chapter 4, 64-70; 77-89

September 23: Defining Judicial Authority

Defining Judicial Power
- Judiciary Act of 1789
- Calder v. Bull
- Marbury v. Madison
- AC Chapter 4, 110-115; 123-134

September 28: State Power and the Transition to Jacksonianism

Federal Review of Statutes
- Fletcher v. Peck
  - Martin v. Hunter’s Lessee

Introduction: The Jacksonian Era
- AC Chapter 4, 138-149
- AC Chapter 5, 350-358

QUIZ ONE
September 30: The Developing Confrontation over Slavery
The Fugitive Slave Clause
Prigg v. Pennsylvania
Dred Scott v. Sandford
• AC Chapter 5, 378-396

October 5: Constitutional Failure: Slavery and Indians
Nullification
Calhoun, Fort Hill Address
Webster, Speech on Nullification
Jackson, Proclamation on Nullification
States and Indian Tribes
Worcester v. Georgia
• AC Chapter 5, 418-431

October 7: Secession and Civil War
Introduction: Secession, Civil War, and Reconstruction
Secession
South Carolina Ordinance
Davis, The Right of Secession
Black, Opinion on the Power of the President
Lincoln, First Inaugural Address
Lincoln, Fourth of July Message to Congress
Martial Law and Habeas Corpus
Ex Parte Merryman
Bates, Opinion on Suspension of Habeas
Lincoln, Proclamation
Act Relating to Habeas Corpus
Ex Parte Milligan
• AC Chapter 6, 507-510; 564-580; 619-634

October 12: War and Reconstruction
The Emancipation Proclamation
The Impeachment of Andrew Johnson
Tenure of Office Act
Impeachment
Judicial Power
Republicans Reorganize the Federal Judiciary
Lincoln on Departmentalism
Ex Parte Merryman
Jurisdiction and Martial Law
Ex Parte McCardle
Ex Parte Yeager
• AC Chapter 6, 634-636; 648-664; 669-676

October 14: Redefining Nationhood
Introduction: The Republican Era
Brewer, The Nation’s Safeguard
Federal Power to Enforce Civil Rights
Civil Rights Cases
Congressional Debates on Lynching
• AC Chapter 6, 559-562
• AC Chapter 7, 683-691; 694-707

October 19: Republican Era Conceptions of Commerce

Power to Regulate Commerce
- Senate Debate on the Sherman Anti-Trust Act
- United States v. E.C. Knight Company
- Correspondence on the Pullman Strike
- In re Debs
- Federalism, the Sherman Act, and Unions
- Champion v. Ames
- McCray v. United States
- Hoke v. United States
- Hammer v. Dagenhart

• AC Chapter 7, 716-742

October 21: Republican Era Struggles over Federalism

Dormant Commerce Clause
- Wabash, St. Louis & Pacific Railroad v. Illinois

Police Powers
- Thomas Cooley, Constitutional Limitations
- Munn v. Illinois

• AC Chapter 7, 778-783; 790-796

October 26: The Rise of the New Deal and the Commerce Revolution

Introduction: The New Deal and the Great Society
Powers of the National Government
- Schechter Poultry Co. v. United States
- Carter v. Carter Coal
- NLRB v. Jones & Laughlin Steel Corp.
- United States v. Darby
- Wickard v. Filburn
- Memorandum on Wickard

• AC Chapter 8, 911-924; 934-965

QUIZ TWO TODAY

October 28: From New Deal to Great Society

Federal Power to Enforce Civil Rights
- Truman, Message to Congress
- Debate over the Civil Rights Act of 1964
- Heart of Atlanta Motel v. United States
- South Carolina v. Katzenbach
- Katzenbach v. Morgan

• AC Chapter 8, 965-989

November 2: World War II and Presidential Power in Military Conflict

Hirabayashi v. United States
- Ex parte Quirin
- Korematsu v. United States
- Ex parte Endo

• AC Chapter 8, 1067-1073; 1080-1093
November 4: Reconfiguring Executive Power
*Youngstown Sheet & Tube Co. v. Sawyer*
- AC Chapter 8, 1035-1051

November 9: Judicial Supremacy
*Judicial Supremacy*
- *Roosevelt, Undelivered Speech*
- *Roosevelt, Fireside Chat on the Court-Packing Plan*
- *Judiciary Committee Report*
- *Ashwander v. TVA*
- *United States v. Carolene Products*
- *Southern Manifesto*
- AC Chapter 8, 1121-1137

November 11: Articulating Thresholds for Constitutional Decision-making
*Threshold Questions*
- *Standing*
  - *Poe v. Ullman*
  - *Flast v. Cohen*
- *Political Questions*
  - *Baker v. Carr*
- AC Chapter 8, 1142-1158; 1163-1174

November 16: The Contemporary Era: Rethinking the Commerce Clause
*Introduction: Constitutional Debates in the Contemporary Era*
- *Reagan, Inaugural Address*
- *Contract With America*
- *Clinton, Fourth Annual Message*
*Powers of the National Government (Commerce Shifts)*
- *Reagan, Remarks*
- *United States v. Lopez*
- *Gonzales v. Raich*
- *United States v. Morrison*
- AC Chapter 9, 1219-1253

November 18: Federalism and State Autonomy
*Garcia v. San Antonio Metropolitan Transit Authority*
*US Term Limits v. Thornton*
*Printz v. United States*
- AC Chapter 9, 1264-1292

**ROUGH DRAFT OF PAPER DUE TODAY**

November 23: Executive Authority in Times of Crisis
*Yoo, President’s Authority*
*Memoranda on Standards of Conduct*
*Hamdi v. Rumsfeld*
*Hamdan v. Rumsfeld*
AC Chapter 9, 1361-1377; 1383-1403

November 25: No class due to Thanksgiving
November 30: Continued Debate over How to Balance Military Necessities
- Boumediene v. Bush
- El Masri v. United States
- Winter v. NRDC

QUIZ THREE TODAY

December 2: Current Issues with the Branches’ Authority
The Living Constitution Debate
Constitution in Exile
- AC Chapter 9, 1486-1497
- Kucana v. Holder
- United States v. Comstock

December 7: The Second Amendment Revival
- District of Columbia v. Heller
- Sears v. Upton

FINAL DRAFTS OF PAPERS DUE TODAY

FINAL EXAMINATION: Friday December 17, 8:00 – 10:00 AM